

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

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SYNELL HALL-PHILLIPS; BARBARA  
WEAR; PAMELA MASON,

Plaintiffs,

v.

BANK OF AMERICA, N.A.; HSBC BANK  
USA NATIONAL ASSOCIATION;  
MCCABE WEISBURG & CONWAY, PC;  
PHELAN, HALLINAN & SCHMIEG, LLP;  
WELLS FARGO HOME MORTGAGE  
LOAN,

Defendants.

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Civil Action No. 2:13-cv-03966-MAM

**DEFENDANT BANK OF AMERICA, N.A.'S RESPONSE IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR RELIEF**

Defendant Bank of America, National Association, ("BANA") by and through its undersigned counsel, Reed Smith, LLP, respectfully submits this Response in Opposition to plaintiffs Synell Hall-Phillips ("Ms. Hall-Phillips"), Barbara Wear ("Ms. Wear") and Pamela Mason ("Ms. Mason" and collectively, with Ms. Hall-Phillips and Ms. Wear, "Plaintiffs") Motion for Relief.

## **I. INTRODUCTION**

On August 29, 2013, Plaintiffs filed a pleading that has been docketed as a “Motion for Relief.” Plaintiffs’ pending Motion for Relief, however, fails because it is premature. *See* Fed. R. Civ. P. 60(B). Notwithstanding this independently sufficient reason for denial, the Motion also fails because it is extremely vague and the exact cause of action for which the Plaintiffs seek relief is unclear.

## **II. PLAINTIFFS’ PURPORTED “MOTION FOR RELIEF” IS PREMATURE**

Under Federal Rule of Civil Procedure 60, a Motion for Relief may be granted to correct a mistake arising from oversight or omission whenever one is found in a judgment or order. Federal Rule of Civil Procedure 60(b) provides that “the court may relieve a party...from a[n]...order” for “any reason that justifies relief.” However, no order or judgment has been issued in this case as the Defendants’ motions to dismiss are still pending. Therefore, the Court should deny Plaintiffs’ Motion for Relief because it is premature.

## **III. PLAINTIFFS’ MOTION IS VAGUE AND ITS PURPOSE UNCLEAR**

Additionally, Plaintiffs’ motion should be denied because it is extremely vague, making the purpose or relief sought unclear. It is true that the court has greater leniency for *pro se* plaintiffs and thus construes their pleadings liberally. *Blakely v. Allegheny County Airport Authority*, Civil Action No. 07-77, 2007 WL 1599008 (W.D. Pa., June 4, 2007) (citing *Haines v. Kerner*, 404 U.S. 519, 520 (1972)). However, “plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2006), citing *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986) (on a motion to dismiss, courts “are not bound to accept as

true a legal conclusion couched as a factual allegation"); *see also Tuchman v. DSC Communications Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994) (finding conclusory allegations insufficient).

The bulk of Plaintiffs' motion contains a recitation of cases, yet lacks any meaningful explanation of why it was filed or the relief Plaintiffs seek. In light of these deficiencies, the Court should deny Plaintiffs' motion.

#### **IV. CONCLUSION**

For all of the foregoing reasons, Defendant Bank of America, N.A. respectfully requests that the Court deny Plaintiffs' Motion for Relief in its entirety.

Dated: September 11, 2013

#### **REED SMITH LLP**

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Bank of America, N.A.

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be served a true and correct copy of the foregoing Response in Opposition to Plaintiffs' Motion for Relief via electronic filing on the Court's ECF System this 11<sup>th</sup> day of September, 2013, upon all counsel of record.

I hereby certify that I caused to be served a true and correct copy of the foregoing Response via certified and regular U.S. mail this 11<sup>th</sup> day of September, 2013, upon the following:

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